



**OFFICE OF  
THE ATTORNEY GENERAL  
AUSTIN, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

February 10, 1947

Hon. Donald E. Tracy      Opinion No. V-10

County Auditor

Winkler County

Kermit, Texas

Re: Authority of the Commissioners' Court to increase the salary of County Judge, County Clerk, County Treasurer, County Assessor-Collector of Taxes, Sheriff, Justice of the Peace and Constable.

Dear Sir:

We have received your letter of recent date requesting an opinion of this department upon the above subject matter. Your letter reads as follows:

"I would like your opinion on the following questions based on the following facts.

"(1) Can the Commissioners Court increase the salaries of the County Judge, County Clerk, County Treasurer, County Tax Assessor-Collector, Sheriff, Justices of the Peace, and Constables, by 9% over and above the salaries paid in 1946 for the year 1947.

"(2) Under Article 1646, Vernon's Civil Statutes, the County Auditor may be paid a sum not to exceed that paid to the Tax Assessor-Collector, but under Article 1645, the County Auditor may be paid on the basis of \$125 per million dollars valuation not to exceed \$3,600.00 per annum. Which of these statutes apply to Winkler County and what is the maximum salary that may be paid the County Auditor for the year 1947.

"The facts which I believe affect the above questions are as follows:

"(a). The population of Winkler County according to the last Federal Census in 1940 is 6,141.

Honorable Donald E. Tracy, Page 2

"(b). The valuation as shown by the last approved tax roll is \$31,607,470.00.

"(c). In 1945 the commissioners court granted a 25% increase in salary to the above named officials in question (1), under Article 3912e, Section 15-b, and also a 11% increase in salary under Article 3912e, Section 15.

"(d). The valuation on the last approved tax roll which was the basis for the increase in 1945 was \$20,819,098.00."

According to the records of the Comptroller's Office, the county and precinct officials of Winkler County are compensated on a salary basis.

Section 15 of Article 3912e provides in part as follows:

"The Commissioners' Court in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. The Commissioners' Court in each of such counties is hereby authorized, and it shall be its duty, to fix the salaries of Criminal District Attorneys. In the event such Court passes such order they shall pay to each of said District and County officers in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by said officer in his said official capacity for the fiscal year of 1935 and not more than the maximum allowed such officer under laws existing August 24, 1935, and not more than the maximum amount allowed such officer under laws existing August 24, 1935, provided, that in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census, and having an assessed valuation in excess of Ten Million (\$10,000,000.00) Dollars according to the last preceding approved tax roll of such county the maximum amount allowed such officers as salary may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation, or fractional part thereof, in excess of said Ten Million Dollars (\$10,000,000.00) valuation over and above the maximum amount allowed

such officers under laws existing on August 24, 1935; provided, however, no salaries covered by this Section shall exceed the sum of Four Thousand Five Hundred (\$4,500.00) Dollars regardless of the percentage of increase in population and valuation and provided further that in all counties having a population of not less than twenty thousand and one (20,001) and not more than twenty-five thousand (\$25,000), according to the last preceding Federal Census, and which has an assessed valuation in excess of Twenty-five Million (\$25,000,000.00) Dollars according to the last preceding approved tax roll of such counties, the county judge, sheriff, county attorney, assessor and collector of taxes, county clerk and district clerk, the maximum salary is hereby fixed at Three Thousand Seven Hundred and Fifty(\$3,750) Dollars.

\* \* \* \*

"(b) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred (\$3600.00) Dollars."

Under Section 15 of Article 3912e, the Commissioners' Court is authorized to pay the officers named therein not more than the maximum amount allowed under the law existing August 24, 1935, plus one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof in excess of Ten Million (\$10,000,000.00) Dollars assessed valuation. According to the records of the Comptroller's Office, Winkler County had an assessed valuation in 1943 of \$20,091,789.00 and an assessed valuation in 1946 of \$31,607,470.00. Therefore, in 1944, the county officials of Winkler County named in Article 3912e, Section 15, could receive eleven (11%) per cent over and above the maximum amount allowed such officers under the law existing August 24, 1935, provided none of such salaries exceed the sum of \$4500.00. The maximum salaries the county officers of Winkler County could receive under laws existing on August 24, 1935, as fixed by Section 1 of Article 3883 and Article 3891, as amended by Chapter 327, Acts 44th

Hon. Donald E. Tracy, Page 4

Legislature, p. 752, was Three Thousand (\$3000.00). Therefore, the county officials of Winkler County could receive in 1944 \$3330.00. (\$3000.00 plus \$330.00).

Subdivision (b), Section 15 of Article 3912e authorizes an additional increase of twenty-five (25%) per cent over the sum allowed under the law for the fiscal year of 1944, provided such salary did not exceed \$3600.00 in 1944. Therefore, the Commissioners' Court of Winkler County could allow such officers an additional increase of \$832.50 (twenty-five (25%) per cent of \$3330.00).

Since Winkler County had an assessed valuation in 1946 of \$31,607,470.00, it is the opinion of this Department that the Commissioners' Court of Winkler County may fix the salaries of such officials for the ensuing year twenty-two (22%) per cent over and above the maximum allowed such officers under the law existing August 24, 1935, (\$3000.00 plus \$660.00) plus an additional increase of twenty-five (25%) per cent over and above the sum allowed under the law for the fiscal year of 1944 (\$832.50), provided in no event shall such salary exceed the sum of \$4500.00.

In other words, the maximum salary that may be allowed the county officials of Winkler County named in Section 15 of Article 3912e for the year 1947 is \$4492.50. (\$3000.00 plus \$660.00 plus \$832.50.)

The compensation of the precinct officers of Winkler County is governed by Section 17 of Article 3912e which reads in part as follows:

"The term 'Precinct Officers' as used in this Act means justices of the peace and constables.

" - - -

"(b) In counties where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners' Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation earned by him in his official capacity for the fiscal year 1935 and not more than the maximum amount

Honorable Donald E. Tracy, Page 5

allowed such officer under laws existing August 24, 1935."

The maximum salary the precinct officers could receive under the laws existing August 24, 1935 as fixed by Article 3883 and Article 3891, as amended by Chapter 327, Acts of the 44th Legislature, page 752, was Fourteen Hundred (\$1400.00) Dollars.

Article 3891, subdivision (a), authorizes an increase of twenty-five (25%) per cent over the sum allowed for the fiscal year of 1944. Therefore, the Commissioners' Court of Winkler County could allow the precinct officers an increase of Three Hundred Fifty (\$350.00) Dollars.

Therefore, the maximum salary the precinct officers of Winkler County could receive for the year 1947 is \$1750.00, (\$1400.00 plus \$350.00).

Your second question is answered by our Opinion No. 0-6234, a copy of which we are enclosing herewith. It states:

"Generally speaking, in view of the foregoing statutes, you are advised that the annual salary of the County Auditor cannot be more than the annual salary allowed or paid the Assessor and Collector of Taxes in his county, and not less than the annual salary allowed such County Auditor under the general laws provided in Article 1645, Revised Civil Statutes, as said Article existed on January 1, 1940. Such salary of the County Auditor to be fixed and determined by the District Judge or District Judges making such appointment and having jurisdiction in the county, a majority ruling, said annual salary to be paid monthly out of the general fund of the county. If the annual salary of the County Auditor was fixed under the provisions of Article 1645, as said Article existed on January 1, 1940, said salary must be computed from the last approved tax rolls at the time the salary was fixed."

#### SUMMARY

1. The Commissioners' Court of Winkler County is authorized to fix the salaries of the county officials covered by Section 15 of Article 3912e at 22% over and above the maximum amount allowed such officers under the law existing August 24, 1935.

Honorable Donald E. Tracy, Page 6

(\$3000.00 plus \$660.00) plus an additional increase of 25% over and above the sum allowed under the law for the fiscal year of 1944 (\$832.50) -- in other words, \$4492.50.

2. The maximum salary the precinct officials (justices of the peace and constables) of Winkler County for the year 1947, is \$1750.00. Article 3883 and 3891.

3. County Auditor cannot receive more than the annual salary allowed Assessor and Collector of Taxes in his county nor less than the annual salary allowed such County Auditor on January 1, 1940.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *John Reeves*  
John Reeves  
Assistant

APPROVED FEB. 10, 1947

*Price Daniel*  
ATTORNEY GENERAL

JR:jrb

Approved Opinion Committee  
By BWB  
Chairman